

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jenelle Slavin	Team: Team # 7	CCRB Case #: 200410323	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/07/2004 10:30 AM	Location of Incident: 34th Avenue	Precinct: 103	18 Mo. SOL 4/7/2006	EO SOL 4/7/2006	
Date/Time CV Reported Mon, 10/18/2004 4:43 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/18/2004 11:43 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Reinaldo Alvarez	15342	927853	103 PCT
2. POM Thomas Higdon	01261	911080	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Reinaldo Alvarez	Discourtesy: PO Reinaldo Alvarez spoke rudely to § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Thomas Higdon	Force: PO Thomas Higdon used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Synopsis

§ 87(2)(b) filed a walk-in complaint at the CCRB on October 18, 2004. Her lawyer, § 87(2)(b), accompanied her. On October 7, 2005 § 87(2)(b) a co-worker of § 87(2)(b)s, called the police and stated that § 87(2)(b) assaulted her with a spatula at the White Castle on 34th Avenue in Queens. PO Thomas Higdon and PO Reinaldo Alvarez of the 103rd Precinct responded to the call and spoke with § 87(2)(b) who reiterated her complaint. § 87(2)(b) was upset that § 87(2)(b) had accused her of this and she did not want to speak with the officers about what occurred. § 87(2)(b) walked away from the officers and told them that they should leave her alone. § 87(2)(b) alleged that PO Alvarez told § 87(2)(b) that she should "fire this frickin bitch" (referring to § 87(2)(b) (allegation A) She also alleged that PO Higdon used force against her when he "grabbed" her arm, "dragged" her across the room and "threw" her against the wall. (allegation B) § 87(2)(g)

Summary of Complaint

On October 18, 2004, § 87(2)(b) came into the CCRB and filed this complaint with her lawyer. § 87(2)(b) is § 87(2)(b). She originally stated that she did not have any kind of argument with § 87(2)(b) § 87(2)(b). However, later in the interview she conceded that she had an argument with § 87(2)(b) at around 10:30 a.m. She stated that this argument never became physical and that the argument was in the office where the camera is. After the argument, § 87(2)(b) told § 87(2)(b) that she was going to call their boss § 87(2)(b). However, instead of calling § 87(2)(b) § 87(2)(b) § 87(2)(b) called 911 and said that § 87(2)(b) had assaulted her with a spatula.

PO Alvarez and PO Higdon arrived at White Castle Systems Incorporated at around 11:00 a.m. and § 87(2)(b) let them in. While both of the officers were talking with § 87(2)(b), § 87(2)(b) called the § 87(2)(b), who was in the Bronx for the day. When § 87(2)(b) got off of the phone, both of the officers came up to her and started yelling. However, at the time of the interview, she could not recall what they were yelling. § 87(2)(b) was very upset and she repeatedly tried to tell the officers that she had not done anything wrong. She told them that they should leave her alone. PO Alvarez was yelling at § 87(2)(b) and he said to § 87(2)(b) "fire this fuckin bitch" (referring to § 87(2)(b)). § 87(2)(b) told the police officers that she could not do this because § 87(2)(b) is her senior. This is the first time that the officers learned that § 87(2)(b) had a higher position at the White Castle Systems than § 87(2)(b). § 87(2)(b) walked away from the officers. The officers followed § 87(2)(b) and PO Higdon grabbed § 87(2)(b)'s arm with one of his hands and "dragged" her across the room. PO Higdon put both of his hands on § 87(2)(b)'s shoulders and pushed her up against the wall three times. On one of the pushes, § 87(2)(b) fell onto the ground. PO Alvarez told PO Higdon to handcuff § 87(2)(b). PO Higdon turned § 87(2)(b) around and handcuffed her.

§ 87(2)(b) told the officers that there was a videotape that was taping everything. PO Alvarez told her that there was no "frickin camera." § 87(2)(b) assured him that there was and that he could look at it to see that she had never assaulted § 87(2)(b). The officers and § 87(2)(b) went to the computer where the video was. The officers took off § 87(2)(b)'s handcuffs and § 87(2)(b) showed them the video. When the officers saw the video, they called § 87(2)(b) into the room and § 87(2)(b) could not show them anywhere on the tape where § 87(2)(b) had a spatula. The officers apologized to § 87(2)(b). They told her supervisor Peter Ravarez that § 87(2)(b) had been lying and they left.

§ 87(2)(b) did not receive any injuries from this incident. § 87(2)(b) listed § 87(2)(b) as a witness. However, she stated that § 87(2)(b) was not in the room for any of the allegations. § 87(2)(b)

§ 87(2)(b)'s lawyer, § 87(2)(b) was present for the interview on October 18, 2004. § 87(2)(b) and § 87(2)(b) stated that they were contemplating filing a civil suit, but that they had not filed one yet. § 87(2)(b) spoke with the undersigned investigator again on December 28, 2004 and stated that he had still not filed a suit. However, on § 87(2)(b), § 87(2)(b) and § 87(2)(b) filed a Notice of Claim about this incident (see enclosure 9A-9D).

In the Notice of Claim, § 87(2)(b) gave an additional statement, in which she claimed that PO Alvarez, was the officer that used excessive force against her. She stated that PO Alvarez pushed her "causing her to lose her balance and nearly fall to the ground," he twisted her arm and he placed excessively tight handcuffs on her wrists. In § 87(2)(b)'s CCRB statement § 87(2)(b) made these allegations against PO Higdon, not PO Alvarez. In the Notice of Claim, she did not state that PO Higdon used force against her.

Results of Investigation

Witness Interviews

§ 87(2)(b) could not be contacted for an interview. Neither § 87(2)(b) nor management at the White Castle Systems had contact information for § 87(2)(b). Searches using DMV, Metro Search, Search Bug, White Pages and People Finder all yielded negative results.

§ 87(2)(b) was not interviewed because § 87(2)(b) stated that she was not in the room for the allegations and because the surveillance video (discussed below, see enclosure 4A) did not show her as being present throughout the incident.

Memobooks

PO Alvarez's memobook: 11:00 (39) 160 Jamaica White Castle 90y; 11:42 63; 12:42 98 (enclosure 7A-7C)

PO Higdon's memobook: no entries (enclosure 6A)

Officer Interviews

PO Alvarez and PO Higdon were interviewed at the CCRB on January 28, 2005. On October 7, 2004 PO Higdon and PO Alvarez received a call to go to the White Castle because there was a dispute with a spatula. When they arrived, they spoke with § 87(2)(b). PO Higdon stated that § 87(2)(b) said that § 87(2)(b) hit her with a spatula in the face and back several times. § 87(2)(b) stated that she was upset that § 87(2)(b) attacked her with the spatula, but that she did not have any injuries. PO Alvarez and PO Higdon approached § 87(2)(b) and told her that they needed to speak with her about what happened. § 87(2)(b) started screaming, stating that she was working and she did not have time to speak with the officers. § 87(2)(b) then walked away from the officers and they followed her calling out to her to stop and talk with them. When the officers caught up to § 87(2)(b) she proceeded to use her body to push her way through the officers in an attempt to get away from them. The officers continued to ask § 87(2)(b) to stop and § 87(2)(b) continued to scream at them and walk away.

PO Higdon stated that after § 87(2)(b) had refused to stop several times he stuck his arm out to block her from continuing to walk away. PO Higdon decided to place § 87(2)(b) in handcuffs so that she could be controlled while they talked to her about what happened. PO Alvarez stated that at this time they could have issued § 87(2)(b) a summons for disorderly conduct because she was yelling, waving her arms around and refusing to stop and speak with the officers. PO Alvarez further stated that during the handcuffing process, § 87(2)(b) was standing in front of a wall, facing away from the wall. PO Alvarez stated that the officers turned § 87(2)(b) around to face the wall. He further stated that § 87(2)(b) did not hit the wall, and neither officer pushed her into the wall. PO Higdon could not recall where § 87(2)(b) was standing when she was handcuffed and he stated that he did not recall whether she was near a wall or if they turned her around. Neither officer could recall which one of them actually placed the handcuffs on § 87(2)(b). However, PO Alvarez stated that § 87(2)(b) was resisting being handcuffing and it took both of them to get her hands behind her back. PO Alvarez stated that § 87(2)(b) was not flailing her arms or doing anything dangerous in her attempt to resist them; she was just refusing to put her hands behind her back. PO Higdon could not recall if § 87(2)(b) was resisting during the handcuffing process, but he stated that she was difficult and refusing to comply with the officers throughout the entire

incident. Both officers agreed that once the handcuffs were on, they were able to speak with § 87(2)(b). She was crying, but she stated that she did not attack the complainant with a spatula.

The officers learned that there was a surveillance videotape. PO Higdon could not recall how they attained this information and PO Alvarez thought that another worker at the White Castle told him that there was one. PO Alvarez stated that he put his hand on § 87(2)(b)'s bicep and guided her to the room where the video camera was. However, he stated that he was guiding her, not dragging her. She was not resisting him and they were walking together. The officers watched the video. They saw that § 87(2)(b) and the complainant had an argument. However, they did not see anywhere on the video where § 87(2)(b) had a spatula. One of the officers, neither officer could recall which one, took § 87(2)(b)'s handcuffs off. A head manager from the White Castle arrived and said that they had had numerous problems with fighting amongst their workers and that management would take care of the situation. Since the officers did not see § 87(2)(b) attack the complainant on the videotape, they decided to leave without arresting anyone and they decided not to issue a summons to § 87(2)(b) for acting disorderly. The officers left and they never had any further interaction with the complainant or § 87(2)(b).

Both PO Higdon and PO Alvarez stated that neither of them ever called § 87(2)(b) a bitch or ever said that § 87(2)(b) should be fired. They both also stated that § 87(2)(b) was never dragged by her arm and that she was never thrown against the wall.

Audio Tape

§ 87(2)(b) had a tape recorder in her pocket on October 7, 2004. She tape-recorded some of the incident that occurred. § 87(2)(b), § 87(2)(b)'s attorney, made a copy of the tape and sent it to the undersigned investigator. On this tape § 87(2)(b) and two male's are heard having a conversation. One of the males says, "this is going to be resolved, no one is going to be arrested... The camera says everything." The other male says "I understand that you are upset, but leave it as is, there is nothing you can do, just relax you know you did nothing, she said you did something, the only thing I can tell you is that it is on the camera, cameras don't lie, just relax." The second male also tells § 87(2)(b) that there needs to be a change because things have become volatile to the point that the police are involved. Both of the males are speaking reasonably, calmly and professionally. In contrast, § 87(2)(b) is yelling, crying and sounds very agitated. It is hard to understand what she is saying because she is speaking hysterically. She sounds as if she is talking on the phone and she is saying, "they don't believe me" and "don't fucking talk to me like that." Finally she says "I got everything the police said on this tape." This indicates that the two male voices are the police officers. Neither of the police officers ever curse, raise their voice or say anything rudely. Neither officer ever says the word bitch (See enclosure 5A).

Surveillance Video

§ 87(2)(b) the § 87(2)(b) gave the undersigned investigator a copy of the October 7, 2004 surveillance video. § 87(2)(g) § 87(2)(b) The surveillance video showed that there was no physical fight between § 87(2)(b) and § 87(2)(b). At 10:39 a.m. § 87(2)(b) made a phone call and at 10:45 a.m. § 87(2)(b) made a phone call. At 11:07 a.m. PO Higdon and PO Alvarez arrived and spoke with § 87(2)(b). At this time, § 87(2)(b) was still on the phone. § 87(2)(b) then walked away and both of the officers followed her. The officers were speaking to her and she had her back to them. § 87(2)(b) appeared to be ignoring the officers and she proceeded to walk away from them for a second time. PO Higdon took § 87(2)(b)'s arm around the bicep area. He looked as if he was guiding her and he did not appear to be dragging her. They walked together and talked. PO Higdon spoke with both § 87(2)(b) and § 87(2)(b). Then PO Higdon spoke with § 87(2)(b) alone, while PO Alvarez spoke with § 87(2)(b) alone. PO Higdon made a phone call. § 87(2)(b) had been in an area where cameras could not observe her and when she emerged onto a camera she was in handcuffs. § 87(2)(b) and the officers walked over to where a video camera was. PO Alvarez took § 87(2)(b)'s handcuffs off and the officers and § 87(2)(b) watched the video. Both § 87(2)(b) and PO Higdon made a phone call and then § 87(2)(b) gave PO Higdon a business card. The tape ended. The surveillance video did not have audio (See enclosure 4A).

Sprint Records

Even though § 87(2)(b) stated that § 87(2)(b) called 911, there are no records of a call being made on October 7, 2004 about an incident in the White Castle (See Enclosure 11D).

Notice of Claim

The Notice of Claim states that PO Paul Alvarez, "illegally seized, assaulted and battered, and subjected complainant to excessive force." It does not make any claims against PO Higdon (See enclosure 9A-9D).

Civilian History

§ 87(2)(b) has not filed any other complaints at the CCRB.

Officer CCRB Histories

Allegations of abuse-threat of arrest and abuse-retaliatory summons were substantiated against PO Reinaldo Alvarez in case number 200302054. He received a command discipline.

PO Thomas Higdon has never had an allegation substantiated against him.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) stated that there were two officers, a Spanish male and a Black male. She said that the Spanish male's name was Paul Alvarez and that she did not know the Black officer's name. The video tape and the officers' statements showed that PO Higdon was the Black male officer and PO Alvarez was in fact the Hispanic officer. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Disputed and Undisputed Facts

It is not disputed that § 87(2)(b) called the police and complained that § 87(2)(b) had attacked her with a spatula. When PO Alvarez and PO Higdon responded to the scene, they spoke with § 87(2)(b) who reiterated her complaint. The officers attempted to speak with § 87(2)(b) and she told them that she did not do anything wrong and that she did not want to speak with them. § 87(2)(b) walked away from the officers and PO Higdon attempted to stop her by reaching out his arm. § 87(2)(b) was placed in handcuffs. The officers learned that there was a surveillance video and they watched the video with § 87(2)(b). The video did not show § 87(2)(b) attacking § 87(2)(b) with a spatula. § 87(2)(b) The officers took off § 87(2)(b)'s handcuffs and left without arresting anyone.

§ 87(2)(g)

§ 87(2)(b)

Credibility Analysis

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

In addition, she stated that PO Higdon dragged her by the arm and pushed her up against the wall. § 87(2)(g) § 87(2)(b) was walking away from the officers and PO Higdon merely took her by the arm and escorted her to the corner of the room. There is no indication on the surveillance video that PO Higdon "threw" her against the wall. Furthermore, in the Notice of Claim, § 87(2)(b) stated that PO Alvarez was the officer that used force against her, not PO Higdon. In the Notice of Claim, § 87(2)(b) also stated that she "nearly" fell to the floor and in her CCRB statement she stated that

she fell to the floor. § 87(2)(g)
In addition, the surveillance video does not show § 87(2)(b) falling to the floor at any point. § 87(2)(g)

§ 87(2)(g)
The surveillance video never showed either officer dragging or "throwing" § 87(2)(b) against a wall and on the audio tape they were speaking calmly and courteously.

§ 87(2)(g)

Determination of Facts

§ 87(2)(g)

Allegation A: PO Reinaldo Alvarez spoke rudely to § 87(2)(b)

§ 87(2)(g)

Allegation B: PO Thomas Higdon used physical force against § 87(2)(b)

Patrol Guide Procedure 203-11 states that "only the amount of force necessary to overcome resistance will be used..." (See enclosure 1A) § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: